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IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE
ART UNIT 3643

Examiner Richard Thomas Price, Jr.

Mark A. Poland

CASE 494

SERIAL NO. 10/620,138

FILED July 14, 2003

SUBJECT CRUSTACEAN SHELLING TOOL AND PROCESS FOR USE THEREON

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THE COMMISSIONER OF PATENTS AND TRADEMARKS
WASHINGTON, D.C. 20231

SIR:

Response to Restriction Requirement

The outstanding Office Action mailed January 30, 2004, in the above-identified patent application requires restriction to one of two inventions identified by the Examiner as comprising claims groupings I and II. In response to the outstanding restriction requirement, applicant hereby provisionally elects Group II with traverse.

It is submitted that the outstanding restriction requirement is improper because the claims of Groups I and II are not directed to "independent and distinct" inventions, as contemplated by 35 U.S.C. 121. In accordance with MPEP 806.05(e), the Examiner states that inventions I and II are related as process and apparatus for its practice. As further set forth

in that section of the Manual of Patent Examining Procedure, the inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. The required showing set forth by the Examiner is that the process of removing meat from a tail can be practiced by hand. This showing by the Examiner is clearly flawed because, as claimed, applicant's process is not simply broadly directed to the removal of meat from a tail, but instead requires the use of his claimed apparatus in the meat removal process.

For the reasons set forth in detail above, applicant respectfully requests reconsideration and withdrawal of the outstanding restriction requirement.

It is thus believed that this application is in condition for examination on the merits of all of applicant's claims 1-15. Favorable action is accordingly solicited.

Respectfully submitted,

Mark A. Poland

By



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